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), and the  $\beta$  parameter is the inverse of the variance of the error term.

**) NOTICE OF MOTION AND  
) MOTION FOR JUDGMENT ON THE  
) PLEADINGS BY THE CITY OF  
) BURBANK, BURBANK POLICE  
) DEPARTMENT, OFFICER ADAM  
) BAUMGARTEN, AND OFFICER  
) MICHAEL EDWARDS;  
) MEMORANDUM OF POINTS AND  
) AUTHORITIES; DECLARATION OF  
) CAROL ANN HUMISTON;  
) EXHIBITS; REQUEST FOR  
) JUDICIAL NOTICE; PROPOSED  
) ORDER**

DATE: JUNE 20, 2011

**TIME: 1:30 P.M.**

CTRM: 9

1 TO THE CLERK OF THE COURT, ALL INTERESTED PARTIES AND  
2 THEIR ATTORNEYS OF RECORD:

3 PLEASE TAKE NOTICE that on June 20, 2011, at 1:30 p.m., or as soon as  
4 thereafter as counsel may be heard, in Courtroom 9 of the above-referenced Court,  
5 Defendants City of Burbank, Burbank Police Department, and Burbank Police  
6 Officers Adam Baumgarten and Michael Edwards, will and do hereby move this  
7 Court, pursuant to Federal Rules of Civil Procedure, Rule 12(c), for an order  
8 granting judgment as a matter of law as to all claims for relief on the basis that the  
9 defendants are entitled to judgment as a matter of law.:

10 1. Plaintiff's Section 1983 claim against Officer Baumgarten, and  
11 therefore, also the City of Burbank and Burbank Police Department, is barred  
12 because Plaintiff plead guilty to violating California Penal Code § 148(a)(1) and a  
13 judgment in Plaintiff's favor would necessarily invalidate his conviction. *Heck v.*  
14 *Humphrey*, 512 U.S. 477, 144 S. Ct. 2364, 129 L. Ed. 2d 383 (1994).

15 2. Plaintiff's Section 1983 claim against Officer Edwards, and therefore,  
16 also the City of Burbank and Burbank Police Department, is barred because  
17 Plaintiff plead guilty to violating California Penal Code § 148(a)(1) and a  
18 judgment in Plaintiff's favor would necessarily invalidate his conviction. *Heck v.*  
19 *Humphrey*, 512 U.S. 477, 144 S. Ct. 2364, 129 L. Ed. 2d 383 (1994).

20 3. Plaintiff's state law claims against Officers Baumgarten and Edwards,  
21 the City of Burbank, and the Burbank Police Department, are barred because of his  
22 conviction for violating California Penal Code § 148(a)(1). *Yount v. City of*  
23 *Sacramento*, 43 Cal.4th 885, 902 (2008).

24 This Motion will be based upon this Notice of Motion and Motion, the  
25 Memorandum of Points and Authorities filed and served herewith, the Declaration  
26 of Carol Ann Humiston, the Request for Judicial Notice, the Exhibits attached  
27 hereto, the pleadings, documents and records on file herein, and upon such other  
28 further oral or documentary matters as may be presented at the hearing of this  
motion.

1 This Motion is made following a meet and confer letter dated May 10, 2011,  
2 and a call to Mr. Sauler on May 10, 2011, pursuant to Local Rule 7-3.

3 DATED: May 10, 2011

4 Respectfully submitted,

5 DENNIS A. BARLOW  
6 City Attorney

7 By: 

8 CAROL A. HUMISTON  
9 Sr. Assistant City Attorney  
10 Attorney for Defendants CITY OF  
11 BURBANK BURBANK POLICE  
12 DEPARTMENT, BURBANK  
13 POLICE OFFICERS ADAM  
14 BAUMGARTEN AND MICHAEL  
15 EDWARDS  
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1                                    **MEMORANDUM OF POINTS AND AUTHORITIES**

2        **I. INTRODUCTION**

3            This case relates to the April 10, 2009, arrest of Plaintiff Preston Smith.  
4        Following his arrest, Plaintiff pled guilty to violations of California Health and  
5        Safety Code § 11550(a), the willful and unlawful use of cocaine, and California  
6        Penal Code § 148(a)(1), willfully and unlawfully resisting, delaying or obstructing  
7        a police officer, to wit:

8                                “Ran from Officer Gunn during lawful detention and despite orders to  
9                                stop; used elbows and hands in a fist to strike Officer Baumgarten, Officer  
10                              Edwards, Officer Joel, Officer Rodriguez and Officer Gunn during officers  
11                              attempt to lawfully restrain the defendant; flailed arms and kicked legs when  
12                              officer Baumgarten, Officer Edwards, Officer Joel, Officer Rodriguez and  
13                              Officer Gunn tried to detain the defendant.” (Ex. 1.)

14           Plaintiff's Complaint alleges that on April 10, 2009, he was being questioned  
15           by a police officer. (Comp., ¶ 16.) Thereafter, Officer Gunn tasered him six times.  
16           (Comp., ¶ 17.) Conceding that neither Officer Baumgarten or Officer Edwards  
17           were at the scene during this portion of the contact between Officer Gunn and  
18           plaintiff, plaintiff alleges that Officers Baumgarten and Edwards arrived on the  
19           scene thereafter and used force to restrain him. (Comp., ¶ 18.)

20           Wherein plaintiff's claim is premised on his claim that Officers' Baumgarten  
21           and Edwards used excessive force in restraining plaintiff in order to affect his  
22           arrest, plaintiff's Complaint is barred as a matter of law by the doctrine set forth in  
23           *Heck v. Humphrey*, 512 U.S. 477, 144 S. Ct. 2364, 129 L. Ed. 2d 383 (1994),  
24           because any finding in favor of Plaintiff would necessarily invalidate the Plaintiff's  
25           criminal conviction.

26           As discussed in detail below, Plaintiff was arrested for, charged with, and  
27           plead guilty to striking Officers Baumgarten and Edwards for assaulting and  
28           battering them while attempting to restrain plaintiff to affect his arrest. Because  
                 the criminal record is so comprehensive as to show that all of the events are subject

1 to Plaintiff's criminal conviction, all of Plaintiff's claims are barred.

2 Officers Baumgarten and Edwards move for judgment on the pleadings.  
3 This Motion is based upon the limited issue of whether Plaintiff's claims are barred  
4 by his conviction for violating California Penal Code § 148(a)(1).

5 **II. STATEMENT OF FACTS.**

6 On April 10, 2009, Plaintiff was arrested for a violation of Health and Safety  
7 Code § 11550(a). (UF 1; Exhibit 1.) During the course of affecting that arrest,  
8 plaintiff fled from Officer Gunn. (UF 2; Exhibit 1.) According to plaintiff, Officer  
9 Gunn used a taser on plaintiff six times. (UF 3; Comp., ¶17-18.) After plaintiff  
10 was tasered, plaintiff could hear officers shouting to Officer Gunn, "Why can't we  
11 here you on your radio?" (UF 4; Comp.; ¶ 18.) At that point, plaintiff started  
12 yelling, "He's killing me. He's killing me." (UF 5; Comp., ¶ 18.) According to  
13 the complaint, Officer Baumgarten "upon arriving at the scene" shouted at plaintiff  
14 to, "turn on your stomach and shut the fuck up." (UF 6; Comp., ¶ 18.) Then  
15 according the plaintiff, Officers Baumgarten and Edwards used force to ultimately  
16 affect plaintiff's arrest. (UF 7, Comp., ¶ 18.) There is no allegation of excessive  
17 force used following Plaintiff's arrest. (UF 8.)

18 On April 14, 2009, a four-count misdemeanor complaint was filed against  
19 Plaintiff in the Los Angeles Superior Court. (UF 9; Exhibit 1.) Count III of the  
20 misdemeanor complaint alleged that plaintiff "did willfully and unlawfully use, or  
21 be under the influence of a controlled substance, to wit: Cocaine—a violation of  
22 California Health & Safety code § 11550(a). (UF 10; Exhibit 1.) Count II of the  
23 complaint alleged that Plaintiff "did willfully and unlawfully resist, delay or  
24 obstruct a public officer discharging or attempting to discharge any duty of his  
25 office or employment" – a violation of California Penal Code § 148(a)(1). (UF 11;  
26 Exhibit 1.) The criminal complaint specifically alleged that Plaintiff committed  
the following acts of resistance:

- 27 • Plaintiff ran from Officer Gunn during a lawful detention and despite  
28 orders to stop. (UF 12; Exhibit 1.)

- Plaintiff used elbows and hands in a fist to strike Officer Baumgarten, Officer Edwards, Officer Joel, Officer Rodriguez, and Officer Gunn during the officers' attempt to lawfully restrain Plaintiff. (UF 13; Exhibit 1.)
- Plaintiff flailed arms and kicked legs when Officer Baumgarten, Officer Edwards, Officer Joel, Officer Rodriguez, and Officer Gunn tried to detain him. (UF 14; Exhibit 1.)

On April 29, 2009, Plaintiff plead guilty to violating Count II of the complaint – California Penal Code § 148(a)(1), and Count III—California Health and Safety Code § 11550(a). (UF 15; Exhibits 2 and 3.) Plaintiff signed a four-page document entitled "Misdemeanor Advisement of Rights, Waiver, and Plea Form," which freely acknowledges the guilty plea. (UF 16; Exhibit 2.) Plaintiff's plea was approved by the Court. (UF 17; Exhibits 2 and 3.) In open court on April 29, 2009, in the presence of his criminal defense counsel, Plaintiff admitted he understood the charges against him, and pled guilty. (UF 18; Exhibit 3.)

## **II. PARTIES AND CLAIMS FOR RELIEF.**

Plaintiff in this action is Preston Smith. Defendants in this action are the City of Burbank, the Burbank Police Department, Officer Baumgarten, Officer Edwards, and Officer Gunn.

Plaintiff's Complaint contains four claims for relief – (1) a violation of his Fourth Amendment rights pursuant to 42 U.S.C. § 1983, (2) California Civil Code § 52.1, (3) intentional infliction of emotional distress, and (4) assault and battery.

## **IV. STANDARD FOR MOTION FOR JUDGMENT ON THE PLEADINGS**

The defendants' Motion for Judgment on the Pleadings is brought pursuant to Rule 12(c) of the Federal Rules of Civil Procedure on the basis that the Complaint fails to state a claim. "The principal difference between motions filed pursuant to Rule 12(b) and Rule 12(c) is the time of filing. Because the motions are functionally identical, the same standard of review applicable to a Rule 12(b)

1 motion applies to its Rule 12(c) analog.” *Dworkin v. Hustler Magazine Inc.*, 867  
2 F. 2d 1188, 1192 (9<sup>th</sup> Cir. 1989).

3 The analogous Rule 12(b)(6) provides that an action will be dismissed for  
4 failure to state a claim upon which relief may be granted. Conclusory allegations  
5 of law or unwarranted inferences of fact urged by the nonmoving party are  
6 insufficient to defeat a motion to dismiss. *Ove v. Gwinn*, 264 F. 3d 817, 821 (9<sup>th</sup>  
7 Cir. 2001) (emphasis added). In addition, a court’s obligation to construe  
8 allegations in the light most favorable to the nonmoving party does not mean that  
9 those allegations must be construed in a light favorable to the nonmoving party, if  
10 such a contraction cannot reasonably be made. *Id.* Moreover, dismissal is proper  
11 if there is either a “lack of a cognizable legal theory” or “the absence of sufficient  
12 facts alleged under a cognizable legal theory.” *Balistreri v. Pacifica Police Dept.*,  
13 901 F. 2d 696, 699 (9<sup>th</sup> Cir. 1990).

14 **V. PLAINTIFF'S SECTION 1983 CLAIMS ARE BARRED BY HIS**  
15 **CONVICTION FOR VIOLATING PENAL CODE § 148.**

16 Plaintiff's Section 1983 claim against Officers Baumgarten and Edwards are  
17 barred by the long-standing doctrine that a civil rights plaintiff cannot pursue a  
18 claim that could call into question his criminal conviction. In *Heck v. Humphrey*,  
19 *supra*, the Supreme Court held that:

20 "[I]n order to recover damages for allegedly unconstitutional  
21 conviction or imprisonment, or for other harm caused by actions  
22 whose unlawfulness would render a conviction or sentence invalid,  
23 a § 1983 plaintiff must prove that the conviction or sentence has  
24 been reversed on direct appeal, expunged by executive order,  
25 declared invalid by a state tribunal authorized to make such  
26 determination, or called into question by a federal court's issuance  
27 of a writ of habeas corpus.... A claim for damages bearing that  
28 relationship to a conviction or sentence that has not been so  
invalidated is *not* cognizable under § 1983. Thus, when a state

1 prisoner seeks damages in a § 1983 suit, the district court must  
2 consider whether a judgment in favor of the plaintiff would  
3 necessarily imply the invalidity of his conviction or sentence; if it  
4 would, the complaint must be dismissed...."

5 *Heck*, 512 U.S. at 486-87.

6 According to *Heck*, "[I]f a criminal conviction arising out of the same facts  
7 stands and is fundamentally inconsistent with the unlawful behavior for which  
8 section 1983 damages are sought, the 1983 action must be dismissed." *Smith v.*  
9 *Hemet*, 394 F. 3d 689, 695 (2005); *Smithart v. Towery*, 79 F. 3d 951, 952 (9th Cir.  
10 1996). "As the Supreme Court explained, the relevant question is whether success  
11 in a subsequent § 1983 action would 'necessarily imply' or 'demonstrate' the  
12 invalidity of the earlier conviction or sentence under § 148(a)(1)." *Smith*, 394 F.  
13 3d at 695, citing *Heck*, 512 U.S. at 487.

14 If Plaintiff were to prevail on his Section 1983 claim, such a finding would  
15 necessarily imply the invalidity of his conviction for violating Penal Code §  
16 148(a)(1). The legal elements for a violation of Penal Code § 148(a)(1) are "(1)  
17 the defendant willfully resisted, delayed, or obstructed a peace officer, (2) when  
18 the officer was engaged in the performance of his or her duties, and (3) the  
19 defendant knew or reasonably should have known that the other person was a  
20 peace officer engaged in the performance of his or her duties." *Smith*, 394 F. 3d at  
21 695; *In re Muhammed C.*, 95 Cal. App. 4th 1325, 1329 (2002).

22 For a Penal Code § 148(a)(1) conviction to be valid, the criminal defendant  
23 must resist, delay, or obstruct the officer in the **lawful** exercise of his duties.  
24 *Smith*, 394 F. 3d at 695. The lawfulness of the officer's conduct is an essential  
25 element of the crime. *See People v. Curtis*, 70 Cal. 2d 347, 354-56 (1969); *Susag*  
26 *v. City of Lake Forest*, 94 Cal. App. 4th 1401, 1409 (2002). Therefore, if the  
27 officer was not performing his or her duties at the time of the arrest, the arrest is  
28 unlawful and the arrestee cannot be convicted under Penal Code § 148(a)(1).  
*Smith*, 394 F. 3d at 695.



1 Plaintiff's allegation that Officers Baumgarten and Edwards used excessive  
2 force against him is inconsistent with Plaintiff's conviction, because a police  
3 officer's excessive force is an affirmative defense to a Penal Code § 148(a)(1)  
4 charge. "Excessive force used by a police officer at the time of the arrest is not  
5 within the performance of the officer's duty." *Smith*, 394 F. 3d at 695 (emphasis in  
6 original), citing *People v. Olguin*, 119 Cal. App. 3d 39, 45-46 (1981). If Officers  
7 Baumgarten and Edwards used excessive force against Plaintiff, then Plaintiff  
8 could not have been convicted of violating California Penal Code § 148(a)(1).  
9 Because Plaintiff pled guilty to the violation, a finding in his favor on his Section  
10 1983 claim against Officers Baumgarten and Edwards would be inconsistent and  
11 necessarily invalidate his conviction.

12 Federal district courts have held that *Heck v. Humphrey* bars a plaintiff's  
13 Section 1983 action for excessive force absent proof that a conviction under Penal  
14 Code § 148(a) has been invalidated by appeal or other proceeding. *Franklin v.*  
15 *County of Riverside*, 971 F. Supp. 1332, 1336 (C.D.Cal. 1997); *Nuno v. County of*  
16 *San Bernardino*, 58 F. Supp. 2d 1127, 1133-1134 (C.D.Cal. 1999). Because  
17 Plaintiff's conviction has not been invalidated, his Section 1983 claim against  
18 Officers Baumgarten and Edwards should be dismissed.

19 Although the Ninth Circuit and the California Supreme Court have identified  
20 factual scenarios in which a Penal Code § 148(a)(1) conviction would not be  
21 inconsistent with a finding that a police used excessive force, those factual  
22 scenarios are not present here. *Smith*, 394 F.3d at 696; *Yount v. City of*  
23 *Sacramento*, 43 Cal.4th 885, 899 (2008). For example, in *Smith*, the plaintiff  
24 alleged that the officers used excessive force during multiple interactions with him,  
25 but the criminal record was inconclusive as to what conduct was the basis for the  
26 criminal conviction. Without a better explanation for why the plaintiff was  
27 convicted, the Ninth Circuit found that the plaintiff could have been convicted for  
28 conduct during the first encounter and still proven excessive force during a later  
encounter without disturbing the conviction. *Id.*

1 In this action, the criminal record prevents Plaintiff from making the same  
2 argument. The criminal record demonstrates that Plaintiff violated Penal Code §  
3 148(a)(1) during the entire period of time that he interacted with Officers  
4 Baumgarten and Edwards. Neither Plaintiff nor his criminal counsel limited the  
5 scope of the factual basis for Plaintiff's guilty plea. The criminal record, therefore,  
6 precludes a finding that the defendants used excessive force.

7 Furthermore, to the extent that Plaintiff's Section 1983 claim is based on a  
8 false arrest allegation, this claim also fails. Plaintiff's guilty plea should make it  
9 readily apparent that probable cause existed for his arrest. *See* Fed.R.Civ.P. Rule  
10 11. Not only did Plaintiff plead guilty to violating Penal Code § 148(a)(1), he also  
11 plead guilty to being under the influence of cocaine – Health and Safety Code §  
12 11550(a).

13 **VI. PLAINTIFF'S STATE LAW CLAIMS ARE ALSO BARRED BY HIS**  
14 **CONVICTION FOR VIOLATING CALIFORNIA PENAL CODE §**  
15 **148(a)(1).**

16 The California Supreme Court has applied the *Heck* principle to claims  
17 brought under California law. *Yount v. City of Sacramento*, 43 Cal. 4th 885, 902  
18 (2008). "[W]e cannot think of a reason to distinguish between section 1983 and a  
19 state tort claim arising from the same alleged misconduct..." *Id.* Therefore,  
20 Plaintiff's state law claims for California Civil Code § 52.1, intentional infliction of  
21 emotional distress, and assault and battery should be dismissed as well.

22 **VII. CONCLUSION**

23 For the foregoing reasons, Officers Baumgarten and Edwards request that  
24 the Court dismiss all claims against them.

25 DATED: May 10, 2011

Respectfully submitted,

DENNIS A. BARLOW, City Attorney

By:

CAROL A. HUMISTON

Sr. Assistant City Attorney  
Attorney for Defendants

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Attorney for Defendants CITY OF BURBANK,  
BURBANK POLICE DEPARTMENT,  
BURBANK POLICE OFFICERS ADAM  
BAUMGARTEN AND MICHAEL EDWARDS

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

PRESTON SMITH, an individual;	)	Case No. CV10-8840 VBF (AGR <sub>x</sub> )
	)	
Plaintiff,	)	<b>DECLARATION OF CAROL ANN</b>
	)	<b>HUMISTON IN SUPPORT OF</b>
v.	)	<b>MOTION FOR JUDGMENT ON</b>
	)	<b>THE PLEADINGS BY THE CITY</b>
CITY OF BURBANK, et al.	)	<b>OF BURBANK, BURBANK</b>
	)	<b>POLICE DEPARTMENT, OFFICER</b>
Defendant.	)	<b>ADAM BAUMGARTEN, AND</b>
	)	<b>OFFICER MICHAEL EDWARDS</b>
	)	
	)	<b>DATE: JUNE 20, 2011</b>
	)	<b>TIME: 1:30 P.M.</b>
	)	<b>CTRM: 9</b>
	)	
	)	
	)	

**DECLARATION OF CAROL ANN HUMISTON IN SUPPORT OF  
MOTION FOR JUDGMENT ON THE PLEADINGS BY THE CITY OF  
BURBANK, BURBANK POLICE DEPARTMENT, OFFICER ADAM  
BAUMGARTEN, AND OFFICER MICHAEL EDWARDS**

1 I, Carol Ann Humiston, declare that:

- 2 1. The facts stated herein are personally-known to me and I have first-hand  
3 knowledge thereof. If called upon to do so, I would and could competently  
4 testify hereto under oath.
- 5 2. Attached hereto as Exhibits 1 and 2 are true and correct copies of the  
6 Misdemeanor Complaint and Misdemeanor Advisement of Rights, Wavier,  
7 and Plea Form, both in Case No. 9BR01353.
- 8 3. Attached hereto as Exhibit 3 is a true and correct copy of the transcript of  
9 proceedings on April 29, 2009, in Case No. 9BR01353.

10 I declare under penalty of perjury under the laws of the United States of  
11 America that the foregoing is true and correct and executed this 10<sup>th</sup> day of May,  
12 2011, at Burbank, California.



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14 Carol Ann Humiston  
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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

9ER 01 353

THE PEOPLE OF THE STATE OF CALIFORNIA,  
Plaintiff

vs.

PRESTON LEONARD SMITH

Defendant

Case No.

MISDEMEANOR COMPLAINT

**FILED**  
LOS ANGELES SUPERIOR COURT

APR 14 2009

JOHN A. CLARKE, CLERK  
BY D. CAMACHO, DEPUTY

The undersigned declarant and complainant is informed and believes that

COUNT I

On or about April 10, 2009, in the above-entitled Judicial District, PRESTON LEONARD SMITH did willfully and unlawfully attempt by means of any threat or violence, to deter or prevent an executive officer from performing any duty imposed upon such officer bylaw, or who knowingly resists, by the use of force or violence, such officer in the performance of his duty, a violation of Section 69 of the PENAL CODE of the State of California, a misdemeanor.

COUNT II

On or about April 10, 2009, in the above-entitled Judicial District, PRESTON LEONARD SMITH did willfully and unlawfully resist, delay or obstruct a public officer discharging or attempting to discharge any duty of his office or employment, to wit: RAN FROM OFFICER GUNN DURING LAWFUL DETENTION AND DESPITE ORDERS TO STOP; USED ELBOWS AND HANDS IN A FIST TO STRIKE OFFICER BAUMGARTEN, OFFICER EDWARDS, OFFICER/JOEL, OFFICER RODRIGUEZ AND OFFICER GUNN DURING OFFICERS ATTEMPT TO LAWFULLY RESTRAIN THE DEFENDANT; FLAILED ARMS AND KICKED LEGS WHEN OFFICER

City Attorney's Office

BAUMGARTEN, OFFICER EDWARDS, OFFICER JOEL, OFFICER RODRIGUEZ AND  
OFFICER GUNN TRIED TO DETAIN THE DEFENDANT, a violation of Section 148(a)(1) of the  
PENAL CODE of the State of California, a misdemeanor. ✓

COUNT III

On or about April 10, 2009, in the above-entitled Judicial District, PRESTON LEONARD SMITH did  
willfully and unlawfully use, or be under the influence of a controlled substance, to wit: COCAINE, a  
violation of Section 11550(a) of the HEALTH & SAFETY CODE of the State of California, a  
misdemeanor. ✓

COUNT IV

On or about April 10, 2009, in the above-entitled Judicial District, PRESTON LEONARD SMITH did  
willfully and unlawfully possess a device, instrument, or paraphernalia designed for injecting or smoking a  
controlled substance, a violation of Section 11364 of the HEALTH & SAFETY CODE of the State of  
California, a misdemeanor.

Pursuant to Penal Code Section 1054.5(b), the People are hereby informally requesting that defense  
counsel provide discovery to the People as required by Penal Code Section 1054.3.

Further, attached hereto and incorporated herein are official reports and documents of a law enforcement  
agency which the undersigned believes establish probable cause for the arrest of PRESTON LEONARD  
SMITH, for the above-listed crimes

I declare under penalty of perjury that the foregoing is true and correct.

Executed at Burbank, County of Los Angeles, State of California, on April 14, 2009

Denny Wei  
Declarant and Complainant





SUPERIOR COURT OF CALIFORNIA		FILED LOS ANGELES SUPERIOR COURT APR 29 2009 JOHN A. CLARKE, CLERK MICHAEL ORTIZ, DEPUTY CLERK 9BRO 1353
COUNTY:	COUNTY OF LOS ANGELES	
PLAINTIFF:	PEOPLE OF THE STATE OF CALIFORNIA	
DEFENDANT:	Preston Smith	
MISDEMEANOR ADVISEMENT OF RIGHTS, WAIVER, AND PLEA FORM		

## INSTRUCTIONS

Fill out this form if you wish to plead guilty or no contest to the charges against you. Initial the box for each applicable item only if you understand it, and sign and date the form on page 3. If you have any questions about your case, the possible sentence, or the information on this form, ask your attorney or the judge.

## RIGHT TO AN ATTORNEY

1. I understand that I have the right to be represented by an attorney throughout the proceedings. I understand that the Court will appoint a free attorney for me if I cannot afford to hire one, but at the end of the case, I may be asked to pay all or part of the cost of that attorney, if I can afford to. I understand that there are dangers and disadvantages to giving up my right to an attorney, and that it is almost always unwise to represent myself.

INITIALS ↓

1. PS

## NATURE OF THE CHARGES (Complete all items you are charged with.)

2. I understand that I am charged with the following offense(s):

Plc 148 - robbing a car, 1st/2nd, under the influence

TYPE OF OFFENSE(S) AND SECTION NUMBER(S)

2. PS

3. If applicable - I understand that I am also charged with having the following prior conviction(s):

3. X

LIST OFFENSE(S), CASE NUMBER(S) AND DATE(S)

4. If applicable - I understand that I am also charged with violating the probation order in the following case(s):

4. X

CASE NUMBER(S) AND DATE(S)

5. I understand the charge(s) against me, and the possible pleas and defenses.

5. PS

## CONSTITUTIONAL RIGHTS

6. **RIGHT TO A JURY TRIAL** - I understand that I have the right to a speedy, public jury trial. At the trial, I would be presumed innocent, and I could not be convicted unless 12 impartial jurors were convinced of my guilt beyond a reasonable doubt.
7. **RIGHT TO CONFRONT WITNESSES** - I understand that I have the right to confront and cross-examine all witnesses testifying against me.
8. **RIGHT AGAINST SELF-INCRIMINATION** - I understand that I have the right to remain silent and not incriminate myself, and the right to testify on my own behalf. I understand that by pleading guilty or no contest, or admitting prior conviction(s) or probation violation(s), I am incriminating myself.
9. **RIGHT TO PRODUCE EVIDENCE** - I understand that I have the right to present evidence and to have the Court issue subpoenas to bring into court all witnesses and evidence favorable to me, at no cost to me.

6. PS

7. PS

8. PS

9. PS

# **RIGHTS ON CHARGES OF PRIOR CONVICTION(S) AND PROBATION VIOLATION(S)**

10. If applicable - I understand that I have the right to an attorney, the right to a jury trial, the right to confront witnesses, the right against self-incrimination, and the right to produce evidence for all the charges against me, including any charged prior conviction(s) or probation violation(s). However, for a charge of violating probation, I do not have the right to a jury trial, although I do have the right to a hearing before a judge. . . . .

## **WAIVER OF RIGHTS**

Understanding all this, for all the charges against me, including any prior conviction(s) or probation violation(s):

11. I give up my right to an attorney, and I choose to represent myself. (Does not apply if you have an attorney.)  
 12. I give up my right to a jury trial. . . . .  
 13. I give up my right to confront and cross-examine witnesses. . . . .  
 14. I give up my right to remain silent and to not incriminate myself. . . . .  
 15. I give up my right to produce evidence and witnesses on my own behalf. . . . .

## **CONSEQUENCES OF PLEA OF GUILTY OR NO CONTEST**

16. Penalty: I understand that the possible consequences for the offense(s) charged include the following:

0 96148  
SECTION NUMBER

JAIL - MIN.

MAX.

FINE - MIN.

MAX.

OTHER CONSEQUENCES:

0 14311570  
SECTION NUMBER

JAIL - MIN.

MAX.

FINE - MIN.

MAX.

OTHER CONSEQUENCES:

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SECTION NUMBER

JAIL - MIN.

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OTHER CONSEQUENCES:

17. I understand that in addition to the fine, the Court will add assessments which will significantly increase the amount I must pay. I will also be ordered to make restitution and to pay a restitution fine of \$100 to \$1,000, unless the Court finds compelling and extraordinary reasons not to impose the fine. . . . .  
 18. I understand that if I am not a citizen, a plea of guilty or no contest could result in my deportation, exclusion from admission to this country, or denial of naturalization. . . . .

INITIALS ↓

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## CONSEQUENCES OF PLEA OF GUILTY OR NO CONTEST (Continued)

19. I understand that a plea of no contest (*nolo contendere*) will have exactly the same effect in this case as a plea of guilty, but it cannot be used against me in a civil lawsuit which is based upon, or growing out of the act upon which the criminal prosecution is based, unless the offense is punishable as a felony. . . . .
20. I understand that any plea entered in this case may be grounds for violating probation or parole which has previously been granted to me in any other case. . . . .

## PLEA(S)

21. I hereby freely and voluntarily plead GUILTY to the following:

PLC 148, H&J 10570  
GUILTY OR NO CONTEST  
LIST CHARGE(S)

22. I understand that I have the right to a delay of from 6 hours to 5 days prior to being sentenced. I give up this right and agree to be sentenced at this time. . . . .
23. If applicable - I freely and voluntarily admit the prior conviction(s) I listed on this form. I understand that this admission will increase the penalties which are imposed on me. . . . .
24. If applicable - I freely and voluntarily admit the probation violation(s) I listed on this form and give up my right to a hearing before a judge regarding the probation violation(s). . . . .
25. If applicable - I understand that I have the right to enter my plea before, and to be sentenced by, a judge. I give up this right and agree to enter my plea before, and to be sentenced by: . . . . .

\_\_\_\_\_  
TEMPORARY JUDGE'S NAME

INITIALS ↓	
19.	PS
20.	PS
21.	PS
22.	PS
23.	PS
24.	PS
25.	X

\*\* DEFENDANT'S SIGNATURE: [Signature]

DATE: 4/29/08

## ATTORNEY'S STATEMENT

I am the attorney of record for the defendant. I have reviewed the form and any addenda with my client. I have explained each of the defendant's rights to the defendant and answered all of the defendant's questions with regard to this plea. I have also discussed the facts of the defendant's case with the defendant, and explained the consequences of this plea, the elements of the offense(s), and the possible defenses. I concur in this plea and in the defendant's decision to waive his or her constitutional rights.

[Signature]  
SIGNATURE OF DEFENDANT'S ATTORNEY

4/29/08  
DATE


**INTERPRETER'S STATEMENT (if applicable)**

I, having been sworn or having a written oath on file, certify that I truly translated this form to the defendant in the language indicated below. The defendant stated that (s)he understood the contents of the form, and then (s)he initialed and signed the form.

Language: ☐ Spanish ☐ Other (specify): \_\_\_\_\_

\_\_\_\_\_  
COURT INTERPRETER'S SIGNATURE\_\_\_\_\_  
TYPE OR PRINT NAME\_\_\_\_\_  
DATE**COURT'S FINDINGS AND ORDER**

The Court, having reviewed this form and any addenda, and having questioned the defendant concerning the defendant's constitutional rights and the defendant's admission of prior conviction(s) and probation violation(s), if any, finds that the defendant has expressly, knowingly, understandingly and intelligently waived his or her constitutional rights. The Court finds that the defendant's plea(s) and admission(s) are freely and voluntarily made with an understanding of the nature and consequences thereof, and that there is a factual basis for the plea(s). The Court accepts the defendant's plea(s), the defendant's admission of prior conviction(s) and probation violation(s), if any, and orders this form filed and incorporated in the docket by reference as though fully set forth therein.

  
\_\_\_\_\_  
☒ Judge of the Superior Court  
☐ Temporary Judge of the Superior Court

4/21/09  
\_\_\_\_\_  
DATE



## 1 SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 FOR THE COUNTY OF LOS ANGELES

3 DEPARTMENT NC-2

HON. CARLOS E. VELARDE, JUDGE

4  
5 THE PEOPLE OF THE STATE OF CALIFORNIA,

6 PLAINTIFF,

7 VS.

NO. 9BR01353

8 PRESTON SMITH,

9 DEFENDANT.  
01  
2  
3 REPORTER'S TRANSCRIPT OF PROCEEDINGS

4 WEDNESDAY, APRIL 29, 2009

5  
6  
7  
8 APPEARANCES:

9 FOR THE PLAINTIFF:

DENNY WEI  
DEPUTY CITY ATTORNEY1  
2 FOR THE DEFENDANT:MARK ZAVIDOW  
ALTERNATE PUBLIC DEFENDER3  
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1000LYNN M. EVANS  
OFFICIAL REPORTER  
CSR NO. 5164

1 CASE NUMBER: 9BR01353  
2 CASE NAME: PEOPLE VS. PRESTON SMITH  
3 BURBANK, CA WEDNESDAY, APRIL 29, 2009  
4 DEPARTMENT NC-2 HON. CARLOS E. VELARDE, JUDGE  
5 COURT REPORTER: LYNN M. EVANS, CSR NO. 5164  
6 TIME: 10:09 A.M.

7 --000--

8  
9 THE COURT: PRESTON SMITH.

10 MR. ZAVIDOW: IT IS, YOUR HONOR.

11 HE IS PRESENT.

12 THE COURT: COUNSEL, GIVE ME A MOMENT TO PREPARE THE  
13 SENTENCING SHEET.

14 MR. ZAVIDOW: THANK YOU.

15 (BRIEF PAUSE.)

16 THE COURT: HOW MANY DAYS HAS HE BEEN IN CUSTODY,  
17 COUNSEL? IS THIS A TIME-SERVED SITUATION?

18 MR. ZAVIDOW: IT IS, YOUR HONOR. AND THIS WOULD BE  
19 FROM -- SO WE'RE TALKING ABOUT 20 DAYS.

20 THE COURT: TWENTY DAYS ACTUAL.

21 MR. ZAVIDOW: YES.

22 MR. WEI: SO 30.

23 (BRIEF PAUSE.)

24 THE COURT: OKAY. PRESTON SMITH?

25 THE DEFENDANT: YES, SIR.

26 THE COURT: MR. SMITH, I THINK WE HAVE A SETTLEMENT ON  
27 YOUR CASE, AND I'D LIKE TO GO OVER THE TERMS OF THE SETTLEMENT  
28 SO YOU KNOW EXACTLY WHAT YOU ARE PLEADING TO AND THE

1 CONSEQUENCES OF YOUR PLEA.

2 I'M HOLDING THIS GREEN WAIVER FORM IN MY HAND.  
3 ARE THESE YOUR INITIALS AND SIGNATURE ON THIS GREEN FORM?

4 THE DEFENDANT: YES, YOUR HONOR.

5 THE COURT: THAT INDICATES THAT AS PART OF THE  
6 SETTLEMENT, YOU ARE GIVING UP CERTAIN CONSTITUTIONAL RIGHTS  
7 THAT ARE LISTED IN THIS FORM, IS THAT CORRECT?

8 THE DEFENDANT: YES.

9 THE COURT: AND UNDER THE TERMS OF THE SETTLEMENT,  
10 YOU'LL BE PLEADING TO TWO COUNTS. YOU'LL BE PLEADING TO  
11 COUNT 2, A VIOLATION OF PENAL CODE SECTION 148(A)(1), THAT YOU  
12 DID WILLFULLY RESIST OR DELAY AN OFFICER FROM DISCHARGING HIS  
13 DUTIES.

14 AND IN COUNT 3, A VIOLATION OF 11550(A) OF THE  
15 HEALTH AND SAFETY CODE, THAT YOU DID WILLFULLY AND UNLAWFULLY  
16 USE AND YOU WERE UNDER THE INFLUENCE OF A CONTROLLED  
17 SUBSTANCE, TO WIT, COCAINE.

18 DO YOU UNDERSTAND THE NATURE OF THE CHARGES YOU  
19 ARE PLEADING TO?

20 THE DEFENDANT: YES, SIR.

21 THE COURT: THEY ARE BOTH MISDEMEANORS?

22 THE DEFENDANT: YES, SIR. YES, YOUR HONOR.

23 THE COURT: IF YOU PLEAD TO THOSE TWO CHARGES, THEN  
24 YOU'LL BE PLACED ON SUMMARY PROBATION FOR TWO YEARS. YOU'LL  
25 RECEIVE A SENTENCE OF 30 DAYS IN THE COUNTY JAIL; HOWEVER,  
26 YOU'LL RECEIVE CREDIT FOR 20 PLUS 10 -- IN OTHER WORDS, TIME  
27 SERVED -- AND OTHER STANDARD CONDITIONS OF PROBATION, AND THE  
28 CONDITIONS WILL RUN CONCURRENT, THAT'S TO EACH OTHER, AND THEN



1 WE'LL BE DISMISSING THE OTHER CHARGES, THAT'S COUNTS 1 AND 4.  
2 DO YOU UNDERSTAND?

3 THE DEFENDANT: YES, YOUR HONOR.

4 THE COURT: AS TO COUNT 2, A VIOLATION OF 148(A)(1) OF  
5 THE PENAL CODE, A MISDEMEANOR, HOW DO YOU PLEAD?

6 THE DEFENDANT: GUILTY, YOUR HONOR.

7 THE COURT: AND AS TO COUNT 3, A VIOLATION OF 11550(A)  
8 OF THE HEALTH AND SAFETY CODE, ALSO A MISDEMEANOR, HOW DO YOU  
9 PLEAD?

10 THE DEFENDANT: NO CONTEST, YOUR HONOR.

11 THE COURT: LET THE RECORD SHOW THE COURT HAVING  
12 QUESTIONED THE DEFENDANT CONCERNING HIS CONSTITUTIONAL RIGHTS,  
13 WAIVERS, PLEAS AS TO BOTH COUNTS, CONSEQUENCES, THE COURT IS  
14 SATISFIED AND WILL ACCEPT THE PLEAS.

15 MR. ZAVIDOW: YES. COUNT 3 IS THE ONE TO WHICH HE  
16 PLED NO CONTEST.

17 THE COURT: YES.

18 MR. ZAVIDOW: AND THE COURT COULD AMEND THAT, IF HE  
19 WANTS TO, ON THE GREEN SLIP THAT WAS TURNED IN. IT INDICATES  
20 GUILTY, GUILTY AS TO COUNT 2.

21 THE COURT: GUILTY AS TO 148.

22 MR. WEI: YOUR HONOR, WE CAN'T. SINCE IT'S ONE WAIVER  
23 FORM, HE'LL HAVE TO PLEAD GUILTY TO COUNT 3.

24 THE DEFENDANT: GUILTY, YOUR HONOR.

25 THE COURT: SO WE HAVE GUILTY AS TO BOTH COUNTS,  
26 COUNSEL, IS THAT CORRECT?

27 MR. ZAVIDOW: I DON'T BELIEVE THAT THAT'S NECESSARY.  
28 I THINK THE COURT COULD ACCEPT HIS ORAL NO CONTEST AND JUST

1 LET IT BE.

2 MR. WEI: I WOULD -- I'M ASKING FOR GUILTY ON BOTH.

3 THE COURT: WE'LL NEED A SECOND WAIVER FORM.

4 MR. ZAVIDOW: OKAY. GUILTY. FINE.

5 THE COURT: GUILTY AS TO BOTH COUNTS. THE RECORD WILL  
6 SO INDICATE.

7 IS THE DEFENDANT READY FOR SENTENCING, NO LEGAL  
8 CAUSE?

9 MR. ZAVIDOW: YES.

10 THE COURT: THE DEFENDANT HAVING PLED TO COUNTS 2  
11 AND 3, VIOLATION OF PENAL CODE SECTION 148(A)(1), AND  
12 COUNT 3, HEALTH AND SAFETY CODE SECTION 11550(A), THE SENTENCE  
13 OF THE COURT AND THE CONDITIONS RUN CONCURRENT.  
14 IMPOSITION OF SENTENCE IS SUSPENDED. HE'S PLACED ON SUMMARY  
15 PROBATION FOR TWO YEARS UNDER THE FOLLOWING TERMS AND  
16 CONDITIONS:

17 HE'S TO SERVE 30 DAYS IN THE COUNTY JAIL.  
18 HE'LL RECEIVE CREDIT FOR 20 PLUS 10; IN OTHER WORDS, TIME  
19 SERVED.

20 HE'S NOT TO OWN, USE, POSSESS ANY CONTROLLED  
21 SUBSTANCE OR ASSOCIATED PARAPHERNALIA EXCEPT WITH A VALID  
22 PRESCRIPTION, AND STAY AWAY FROM PLACES WHERE BUYERS, USERS  
23 AND SELLERS CONGREGATE.

24 DO NOT ASSOCIATE WITH PERSONS KNOWN BY YOU TO  
25 BE CONTROLLED SUBSTANCE ABUSERS OR SELLERS EXCEPT WHILE  
26 ATTENDING ANY DRUG TREATMENT PROGRAM.

27 THE DEFENDANT IS ORDERED TO PAY A RESTITUTION  
28 FINE OF \$100, A PROBATION REVOCATION RESTITUTION FINE, OF \$100.

1 THAT'S STAYED UNLESS PROBATION IS REVOKED. A COURT SECURITY  
2 FEE OF \$20. HE'S TO OBEY ALL LAWS AND ORDERS OF THE COURT.

3 DO YOU UNDERSTAND AND ACCEPT THE TERMS AND  
4 CONDITIONS OF PROBATION?

5 THE DEFENDANT: YES, YOUR HONOR.

6 THE COURT: IS THERE A MOTION AS TO COUNTS 1 AND 4?

7 MR. WEI: YES. 1385 PER PLEA.

8 THE COURT: GIVE HIM A YEAR TO PAY THE FEES TO THE  
9 COURT, COUNSEL?

10 MR. ZAVIDOW: YOUR HONOR, THAT'S FINE.

11 THE COURT: 4-29-10.

12 MR. ZAVIDOW: YOUR HONOR, I DO WANT THE COURT TO KNOW  
13 THAT HE'S GOING TO BE IN CUSTODY ON ANOTHER MATTER THAT WILL  
14 MAKE IT VIRTUALLY IMPOSSIBLE THAT HE MEETS THAT DEADLINE, BUT  
15 I DON'T KNOW WHAT ELSE YOU CAN DO.

16 MR. WEI: WE'LL EXTEND THE DEADLINE, THAT'S THE BEST  
17 WAY.

18 HOW LONG WILL HE BE IN CUSTODY?

19 THE COURT: IF HE DOESN'T PAY, IT WILL GO TO CIVIL  
20 COLLECTION WITH THE COURT. THERE IS NO FINE, AT LEAST THAT'S  
21 MY UNDERSTANDING.

22 MR. ZAVIDOW: OKAY.

23 THE COURT: THAT IS THE SENTENCE OF THE COURT.

24 I GUESS THE ONLY -- NO. STRIKE THAT. HE HAS  
25 TIME SERVED.

26 (PROCEEDINGS CONCLUDED.)

27 --000--

28 //

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
2 FOR THE COUNTY OF LOS ANGELES  
3 DEPARTMENT NC-2 HON. CARLOS E. VELARDE, JUDGE  
4  
5  
6

7 THE PEOPLE OF THE STATE OF CALIFORNIA,  
8 PLAINTIFF,

9 VS.

10 PRESTON SMITH,

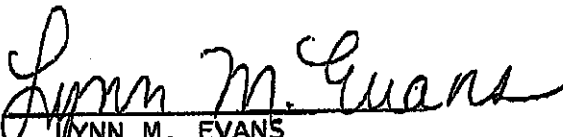
11 DEFENDANT.  
12  
13

NO. 9BR01353

REPORTER'S  
CERTIFICATE

14 I, LYNN M. EVANS, OFFICIAL REPORTER OF  
15 THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE  
16 COUNTY OF LOS ANGELES, DO HEREBY CERTIFY THAT THE  
17 FOREGOING PAGES 1 THROUGH 5, INCLUSIVE, COMPRISE A  
18 FULL, TRUE, AND CORRECT TRANSCRIPT OF THE PROCEEDINGS  
19 HELD IN THE ABOVE-ENTITLED MATTER ON WEDNESDAY,  
20 APRIL 29, 2009.

21 DATED THIS <sup>28th</sup>~~29th~~ DAY OF JANUARY, 2011.

22  
23   
24 LYNN M. EVANS  
25 OFFICIAL REPORTER  
26 CSR NO. 5164, RMR, CRR  
27  
28

## Motions

2:10-cv-08840-VBF -AGR Preston Smith v. City of Burbank et al **CASE CLOSED on 03/01/2011**

(AGRx), CLOSED, DISCOVERY, MANADR, STAYED

### UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA

#### Notice of Electronic Filing

The following transaction was entered by Humiston, Carol on 5/11/2011 at 3:44 PM PDT and filed on 5/11/2011

**Case Name:** Preston Smith v. City of Burbank et al

**Case Number:** 2:10-cv-08840-VBF -AGR

**Filer:** Edwards  
City of Burbank  
Burbank Police Department  
Baumgarten

**WARNING: CASE CLOSED on 03/01/2011**

**Document Number:** 32

#### Docket Text:

**NOTICE OF MOTION AND MOTION for Judgment on the Pleadings as to all claims filed by DEFENDANT Baumgarten, Burbank Police Department, City of Burbank, Edwards. Motion set for hearing on 6/20/2011 at 01:30 PM before Judge Valerie Baker Fairbank. (Attachments: # (1) Declaration OF CAROL ANN HUMISTON, # (2) Exhibit 1-3, # (3) REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF MOTION FOR JUDGMENT ON THE PLEADINGS, # (4) Proposed Order RE MOTION FOR JUDGMENT ON THE PLEADINGS) (Humiston, Carol)**

**2:10-cv-08840-VBF -AGR Notice has been electronically mailed to:**

Carol Ann Humiston chumiston@ci.burbank.ca.us, larutyunyan@ci.burbank.ca.us, Irosoff@ci.burbank.ca.us

David D Lawrence dlawrence@lbaclaw.com, bmoyer@lbaclaw.com

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Juli C Scott jscott@ci.burbank.ca.us

Manuel H Miller miller4law@msn.com

Max A Sauler msauler@miller4law.com

Nathan A Oyster    noyster@lbaclaw.com, clynch@lbaclaw.com

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**Document description:**Main Document

**Original filename:**L:\Smith, Preston\E-FILE DOCUMENTS\NOTICE OF MOTION AND MOTION FOR JUDGMENT ON THE PLEADINGS BY THE CITY OF BURBANK, BURBANK POLICE DEPARTMENT, OFFICER BAUMGARTEN, AND OFFICER EDWARDS; MEMORANDUM OF POINTS AND AUTHORITIES.pdf

**Electronic document Stamp:**

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**Document description:**Declaration OF CAROL ANN HUMISTON

**Original filename:**L:\Smith, Preston\E-FILE DOCUMENTS\DECLARATION OF CAROL ANN HUMISTON IN SUPPORT OF MOTION FOR JUDGMENT ON THE PLEADINGS.pdf

**Electronic document Stamp:**

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**Document description:**Exhibit 1-3

**Original filename:**L:\Smith, Preston\E-FILE DOCUMENTS\EXHIBITS IN SUPPORT OF NOTICE OF MOTION AND MOTION FOR JUDGMENT ON THE PLEADINGS BY THE CITY OF BURBANK, BURBANK POLICE DEPARTMENT, OFFICER BAUMGARTEN, AND OFFICER EDWARDS; MEMORANDUM OF POINTS AND AUTHORITIES.pdf

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**Document description:**REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF MOTION FOR JUDGMENT ON THE PLEADINGS

**Original filename:**L:\Smith, Preston\E-FILE DOCUMENTS\REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF MOTION FOR JUDGMENT ON THE PLEADINGS BY THE CITY OF BURBANK, BURBANK POLICE DEPARTMENT, OFFICER ADAM BAUMGARTEN, AND OFFICER MICHAEL EDWARDS.pdf

**Electronic document Stamp:**

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**Document description:**Proposed Order RE MOTION FOR JUDGMENT ON THE PLEADINGS

**Original filename:**L:\Smith, Preston\E-FILE DOCUMENTS\[PROPOSED] ORDER RE MOTION FOR JUDGMENT ON THE PLEADINGS BY THE CITY OF BURBANK, BURBANK POLICE DEPARTMENT, OFFICER ADAM BAUMGARTEN, AND OFFICER MICHAEL EDWARDS.pdf

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**Arutyunyan, Lusine**

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**Sent:** Wednesday, May 11, 2011 3:45 PM  
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**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA**

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City of Burbank  
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**WARNING: CASE CLOSED on 03/01/2011**

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Dennis Michael Gonzales dgonzales@lbaclaw.com, dard@lbaclaw.com

Juli C Scott jscott@ci.burbank.ca.us

Manuel H Miller miller4law@msn.com

Max A Sauler msauler@miller4law.com

Nathan A Oyster noyster@lbaclaw.com, clynch@lbaclaw.com

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**Original filename:**L:\Smith, Preston\E-FILE DOCUMENTS\[PROPOSED] ORDER RE MOTION FOR



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